

US DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service–Dairy Programs

NEW YORK-NEW JERSEY MILK MARKETING AREA
Federal Order No. 2

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Marketing Orders
Parts 1000 and 1002

PART 1000 - GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

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PART 1000 - GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.

§ 1000.2 Definitions.

The following terms shall have the following meanings as used in the order:

(a) **Act.** "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) **Order.** "Order" means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) **Department.** "Department" means the United States Department of Agriculture.

(d) **Secretary.** "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(e) **Person.** "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Market administrator.

(a) **Designation.** The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) **Powers.** The market administrator shall have the following powers with respect to each order under his administration:

- (1) Administer the order in accordance with its terms and provisions;
- (2) Make rules and regulations to effectuate the terms and provisions of the order;
- (3) Receive, investigate, and report complaints of violations to the Secretary; and
- (4) Recommend amendments to the Secretary.

(c) **Duties.** The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:

§ 1000.3 (c)(1) - § 1000.4 (a)

- (1) (Reserved)
- (2) Employ and fix the compensation of persons necessary to enable him to exercise his powers and perform his duties;
- (3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;
- (4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;
- (5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;
- (6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:
 - (i) Made reports required by the order;
 - (ii) Made payments required by the order; or
 - (iii) Made available records and facilities as required pursuant to § 1000.5;
- (7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;
- (8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and
- (9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

§ 1000.4 Continuity and separability of provisions.

- (a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) ***Suspension or termination.*** The Secretary shall suspend or terminate any or all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) ***Continuing obligations.*** If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) ***Liquidation.***

(1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) ***Separability of provisions.*** If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest priced class.

(a) ***Records to be maintained.***

(1) Each handler shall maintain records of his operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

§ 1000.5 (a)(1)(ii) - § 1000.6 (a)(3)

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary for such market administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c (15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

§ 1000.6 (b) - § 1000.7

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c (15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 *et seq.*) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

§ 1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0581-0032.

PART 1002 - MILK IN NEW YORK-NEW JERSEY MARKETING AREA

GENERAL PROVISIONS AND DEFINITIONS

§ 1002.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

§ 1002.3 Marketing area.

"New York-New Jersey milk marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

New York Counties: Albany; Broome; Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma); Chemung; Chenango; Columbia; Cortland; Delaware; Dutchess; Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only); Fulton (except the township of Stratford); Greene; Herkimer (except the townships of Webb, Ohio, and Salisbury); Madison; Montgomery; Nassau; Oneida (except the townships of Ava, Boonville, Forestport, and Florence); Onondaga; Orange; Oswego (except the townships of Redfield and Boylston); Otsego; Putnam; Rensselaer; Rockland; Saratoga (except the townships of Day, Edinburg, and Providence); Schenectady; Schoharie; Schuyler; Steuben (Addison, Coming, and Erwin townships only); Suffolk (except Fisher's Island); Sullivan; Tioga; Tompkins; Ulster; Warren (except the townships of Johnsburg, Thurman, and Stony Creek); Washington; Westchester; Yates (except the townships of Italy, Middlesex, and Potter).

New Jersey Counties: Bergen; Essex; Hudson; Hunterdon; Middlesex; Monmouth; Morris; Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, and Tuckerton, and the townships of Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, Stafford, and Union); Passaic; Somerset; Sussex; Union; Warren.

§ 1002.5 Dairy farmer.

"Dairy farmer" means any person who produces milk.

§ 1002.6 Producer.

"Producer" means any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption and who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28 (f)(2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.26 (a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of such dairy farmer's milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for such dairy farmer's proportionate share of total milk delivered by dairy farmers to such plant or unit.

§ 1002.7 Handler.

"Handler" means:

- (a) Any person who engages in the handling of skim milk or butterfat which was received at a pool plant, a partial pool plant, a pool unit or a partial pool unit, or at a plant approved by any health authority as a source of skim milk or butterfat for disposition as fluid milk products in the marketing area;
- (b) Any person who engages in the handling of fluid milk products, all or a portion of which is shipped to, or received in, the marketing area; or
- (c) Any cooperative association with respect to milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

§ 1002.8 Plant.

- (a) "Plant" means the land, buildings, surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, handling, or processing of milk or milk products as determined by the market administrator.
- (b) "Pool plant" means any plant which is designated as a pool plant pursuant to § 1002.24 or 1002.28 and any plant, except an other order plant, which receives no milk from dairy farmers or units and from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages or dispenser inserts in the marketing area by direct distribution or is moved either in packaged form or bulk to other plants in the marketing area.
- (c) "Partial pool plant" means a plant which is so designated pursuant to § 1002.29.
- (d) "Other order plant" means a plant which is fully subject to the pricing and payment provisions of an other order.

§ 1002.9 Unit.

- (a) "Pool unit" means a bulk tank unit established pursuant to § 1002.25 and which meets the requirements of a pool unit pursuant to such section.
- (b) "Partial pool unit" means a bulk tank unit so designated pursuant to § 1002.25 (k).

§ 1002.10 Farm.

"Farm" means the production facilities and resources supplying milk to a milk house of a dairy farmer. The location of the farm shall be deemed to be the same as the location of the milk house, and in the event of a change in the location of the dairy farmer's milk house, any question as to whether milk received from the new milk house is from the same or a different farm shall be determined by the market administrator.

§ 1002.11 Own farm milk.

- (a) "Own farm milk" means milk received at a plant from a farm operated by the person who is the operator of such plant.
- (b) The market administrator shall publicly announce the name of any handler operating a pool plant receiving own farm milk and the location of the plant operated by such handler. This public announcement shall not include the name of:
 - (1) Any person meeting the definition of producer-handler as set forth in § 1002.12;
 - (2) Any person receiving no milk from other dairy farmers and selling no more than 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants; or
 - (3) A charitable, religious, educational, or governmental institution which is not engaged in the practice of receiving bulk milk from other sources for processing or packaging and is not engaged in the practice of selling packaged milk to persons not associated with such institution.

§ 1002.12 Producer-handler.

"Producer-handler" means a handler who, following the filing of an application pursuant to paragraph (a) of this section, has been so designated by the market administrator upon determination that the requirements of paragraph (b) of this section have been met. Such designation shall be effective on the first of the month after receipt by the market administrator of an application containing complete information on the basis of which the market administrator determines that the requirements of paragraph (b) of this section are being met. The effective date of designation shall be governed by the date of filing new applications in instances where applications previously filed have been denied. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

- (a) **Application.** Any handler claiming to meet the requirements of paragraph (b) of this section may file with the market administrator, on forms prescribed by the market administrator, an application for designation as a producer-handler. The application shall contain the following information:
 - (1) A listing and description of all resources and facilities used for the production of milk which are owned or directly or indirectly operated or controlled by the applicant.
 - (2) A listing and description of all resources and facilities used for the processing or distribution of milk or milk products which are owned or directly or indirectly operated or controlled by the applicant.
 - (3) A description of any other resources and facilities used in the production, handling, or processing of milk or milk products in which the applicant in any way has an interest, including any contractual arrangement, and the names of any other persons having or exercising any degree of ownership, management, or control in, or with whom there exists any contractual arrangement with respect to, the applicant's operation either in its capacity as a handler or in its capacity as a dairy farmer.

(4) A listing and description of the resources and facilities used in the production, processing, and distribution of milk or milk products which the applicant desires to be determined as the applicant's milk production, processing, and distribution unit in connection with the applicant's designation as a producer-handler: *Provided*, That all milk production resources and facilities owned, operated, or controlled by the applicant either directly or indirectly shall be considered as constituting a part of the applicant's milk production unit in the absence of proof satisfactory to the market administrator that some portion of such facilities or resources does not constitute an actual or potential source of milk supply for the applicant's operation as a producer-handler.

(5) Such other information as may be required by the market administrator.

(b) *Requirements.*

(1) The handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which the handler handles milk received from production facilities and resources (milking herd, buildings housing such herd, and the land on which such buildings are located), the operation and management of which also are under the complete and exclusive control of the handler (in the handler's capacity as a dairy farmer), all of which facilities and resources for the production, processing, and distribution of milk and milk products constitute an integrated operation over which the handler (in his capacity as a producer-handler) has and exercises complete and exclusive control.

(2) The handler, in its capacity as a handler, handles no fluid milk products other than those derived from the milk production facilities and resources designated as constituting the applicant's operation as a producer-handler.

(3) The handler is not, either directly or indirectly, associated with control or management of the operation of another plant or another handler, nor is another handler so associated with the handler's operation.

(4) The handler sells more than an average of 100 quarts per day of Class I-A milk to persons in the marketing area other than to other plants.

(5) In case the plant of the applicant was operated by a handler whose designation as a producer-handler previously had been canceled pursuant to paragraph (c) of this section, the quantity of fluid milk products handled during the 12 months preceding the application which was derived from sources other than the designated milk production facilities and resources constituting the applicant's operation as a producer-handler is less than the volume set forth for cancellation pursuant to paragraph (c)(3) or (4) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under conditions set forth in paragraph (c)(1) and (2) of this section or, except as specified in paragraph (c)(3) and (4) of this section, upon determination by the market administrator that any of the requirements of paragraph (b) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met.

§ 1002.12 (c) (1) - § 1002.13

(1) Milk from the designated production facilities and resources of the producer-handler is delivered in the name of another person as pool milk to another handler or, except in the months of June through November with prior notice to the market administrator, a dairy herd, cattle barn, or milking parlor is transferred to another person who uses such facilities or resources for producing milk which is delivered as pool milk to another handler. This provision, however, shall not be deemed to preclude the occasional sale of individual cows from the herd.

(2) A dairy herd, cattle barn, or milking parlor, previously used for the production of milk delivered as pool milk to another handler, is added to the designated milk production facilities and resources of the producer-handler, except in the months of December through May, with prior notice to the market administrator, or if such facilities and resources were a part of the designated production facilities and resources during any of the preceding 12 months. This provision, however, shall not be deemed to preclude the occasional purchase of individual cows for the herd.

(3) If the producer-handler handles an average of more than 150 product pounds per day of fluid milk products which are derived from sources other than the designated milk production facilities and resources, the cancellation of designation shall be effective the first of the month in which the handler handled such fluid milk products.

(4) If the producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources in a volume less than specified in paragraph (c)(3) of this section, the designation shall be canceled effective on the first of the month following the third month in any six-month period in which the producer-handler handled such fluid milk products: *Provided*, That the receipt of up to an average of 10 pounds per day of packaged fluid milk products in the form of fluid skim milk or of any volume of other packaged fluid milk products (except milk) from pool plants, shall not be counted for purposes of this paragraph (c)(4).

(d) **Public announcement.** The market administrator shall publicly announce the name, plant, and farm location of persons designated as producer-handlers, and those whose designations have been canceled. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from such producer-handler on and after the first of the month following the date of such announcement.

(e) **Burden of establishing and maintaining producer-handler status.** The burden rests upon the handler who is designated as a producer-handler (and upon the applicant for such designation) to establish through records required pursuant to § 1000.5 that the requirements set forth in paragraph (b) of this section have been and are continuing to be met and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1002.13 Other order.

"Other order" means an order issued by the Secretary pursuant to the Act, which order regulates the handling of milk in a marketing area other than that defined in this part.

§ 1002.14 Pool milk.

"Pool milk" means all skim milk and butterfat contained in milk except as set forth in paragraphs (a) through (k) of this section which is pumped at the farm into a tank mounted on a truck or trailer for a handler who has included such milk in a pool unit or a partial pool unit or which is delivered direct from a farm to a pool plant or a partial pool plant but is not put into a tank truck prior to such delivery. This definition shall include any milk so delivered by a person defined in § 1002.11 (b)(2), by an institution defined in § 1002.11 (b)(3), or by a producer-handler designated pursuant to § 1002.12 which milk is produced in accordance with methods and standards of the American Association of Medical Milk Commissions for the production of certified milk and which is delivered in bulk to another handler but for marketing as other than certified milk.

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II or Class III pursuant to § 1002.45 (a)(9) and the corresponding step of § 1002.45 (b).

(b) Milk not approved by a duly constituted regulatory agency for fluid consumption.

(c) Milk delivered by a pool unit direct to a plant other than a pool plant or a partial pool plant if such milk is pooled as producer milk under an other order.

(d) Milk which is pumped into a tank truck at the farm for delivery to a handler during any of the months of December through June if any milk from such farm was delivered to such handler as producer milk under an other order during any of the preceding months of July through November unless such farm becomes part of a partial pool unit.

(e) Milk delivered to a partial pool plant set forth in § 1002.29 (a) and milk of a partial pool unit pursuant to § 1002.25 (k)(1) in excess of the quantity of such milk classified as Class I-A and Class I-B.

(f) Milk delivered to a partial pool plant set forth in § 1002.29 (b) and milk of a partial pool unit pursuant to § 1002.25 (k)(2) in excess of the quantity of such milk classified as Class I-A in the marketing area or at a pool plant, except that if milk is shipped from a partial pool plant in the 401 miles and over freight zone to a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products is disposed of in consumer packages and dispenser inserts in the marketing area either by direct distribution or to other plants, all of the milk so shipped shall be considered to be pool milk except as set forth in paragraph (g) of this section.

(g) Milk delivered to a partial pool plant or a partial pool unit if in either case there is a monetary obligation on such milk under an other order.

(h) Milk received from farms in Nassau and Suffolk counties in New York, which farms are not approved for sale of milk in New York City, and milk received from farms in New York City.

(i) Own farm milk of a handler listed pursuant to § 1002.11 (b) not in excess of an average of 800 pounds per day if the handler is not a producer-handler designated pursuant to § 1002.12, and if the volume of skim milk and butterfat in milk handled, other than that derived from own farm milk, does not exceed an average of 1,600 pounds per day.

(j) Own farm milk of an institution as defined pursuant to § 1002.11 (b)(3) if such milk is not delivered to a pool plant, a partial pool plant, a pool unit, or a partial pool unit.

(k) All skim milk and butterfat handled by:

(1) A producer-handler designated pursuant to § 1002.12 which is derived from such producer-handler's production resources and facilities except as provided in the preamble of this section; or

(2) A producer-handler pursuant to an other order.

§ 1002.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1002.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products from any source other than receipts of pool milk from dairy farmers, receipts from other pool plants and pool units, and receipts of pool milk from partial pool plants and partial pool units;

(b) Receipts in a form other than as a fluid milk product (including those produced at the plant during a prior month) which are reprocessed, converted into, or combined with another product during the month; and

(c) Receipts in a form other than a fluid milk product for which the handler fails to establish a disposition.

§ 1002.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1002.18 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1002.19 [Reserved]

§ 1002.20 Commercial food processing establishment.

"Commercial food processing establishment" means any facility other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of that uses such receipts as ingredients in food products and has no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages.

MARKET ADMINISTRATOR

§ 1002.22 Additional duties of the market administrator.

In addition to the duties specified in § 1000.3 (c) of this chapter, the market administrator shall perform the following duties:

- (a) Maintain a main office and such branch offices as may be necessary;
- (b) Promptly notify a handler, upon receipt of the handler's written request therefor, of the market administrator's determination: as to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided*, That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which make a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;
- (c) Place the sums deducted under § 1002.61 (d) and retained pursuant to § 1002.70 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums or invest them in short-term United States Government securities;
- (d) For the purpose of allocating receipts from other Federal order plants under § 1002.45 (a)(15) and the corresponding step of § 1002.45 (b), publicly announce the market administrator's estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.
- (e) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to §§ 1002.40 (c) and 1002.45 on the basis of such report, (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

POOL PLANTS AND BULK TANK UNITS

§ 1002.24 Regular pool plants.

A plant may be designated a regular pool plant pursuant to either paragraph (a) or (b) of this section. Designation shall be applicable to the plant as such and subject to cancellation only pursuant to § 1002.27, regardless of change in the person owning or operating the plant. The market administrator shall be notified by the handlers involved of any transfer from one person to another of ownership or operation of a pool plant.

- (a) Any plant shall be designated a pool plant upon determination by the Secretary that the provisions of paragraph (a)(1) through (4) of this section have been met. Not later than the end of the month following the month in which an application is received by the Secretary pursuant to paragraph (a)(1) of this section, the Secretary shall either determine that the provisions of

§ 1002.24 (a) - § 1002.25 (a)(1)

paragraph (a)(1) through (4) of this section either have been met or have not been met, or notify the applicant that additional information is needed prior to making a determination. Such designation shall be effective the first of the month following the date of designation and shall continue until such designation is canceled pursuant to § 1002.27.

(1) An application by the operator of the plant for such determination has been addressed to the Secretary and filed at the office of the market administrator: *Provided*, That if 50 percent or more of the dairy farmers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be filed by such cooperative association as well as the person operating the plant.

(2) The plant is located in New York, New Jersey, or Pennsylvania.

(3) The plant was a pool plant pursuant to § 1002.28 (a) or (b) for each of the 12 months immediately preceding the month during which an application is filed.

(4) The operating requirements of § 1002.26 are being met.

(b) A plant may be designated at any time as a regular pool plant upon application made by the person operating the plant to the Secretary showing that the plant is a replacement for one or more pool plants, designated pursuant to this section, which are operated by the plant operator and that substantially all of the dairy farmers delivering milk at the plant previously delivered milk to the pool plant or plants replaced.

§ 1002.25 Bulk tank units.

Any handler receiving milk from farms in a tank truck shall establish such farms in one or more bulk tank units (hereinafter called "units") each consisting of one or more farms, in accordance with provisions of this section. The milk of any farm included in a unit shall be considered for pricing purposes as having been received by the handler in the unit at the nearest point of the township (as determined pursuant to § 1002.52 (b)) in which such farm is located. Any handler who receives milk at a pool plant or a plant distributing Class I-A milk in the marketing area which is delivered from a farm to such plant in a tank truck shall be deemed to have received such milk from a unit, pool, partial pool, or nonpool, and any handler who receives bulk milk from a farm in a tank truck containing pool milk shall be deemed to have received such milk from a farm of a unit, either pool, partial pool, or nonpool.

(a) Handlers who may establish, maintain, and be responsible for pool units are as follows:

(1) A handler who operates a pool plant or a handler who operates a plant from which Class I-A milk is distributed in the marketing area other than to another plant: *Provided*, That a handler who is affiliated with or is a subsidiary of a handler operating a pool plant may also operate pool units if both handlers notify the market administrator in writing of such relationship: *Provided further*, That such handler who operates a distributing plant but not a pool plant, to be eligible to maintain a pool unit for any month, must have combined receipts of skim milk and butterfat from such unit for such month classified as Classes I-A and I-B in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the preceding year.

(2) A cooperative handler who does not operate a plant but who receives milk from farms in a tank truck and delivers such milk to plants of other handlers, if such cooperative for 12 months has been qualified as a basis for payments pursuant to § 1002.77 or if such cooperative has operated a pool unit for 12 consecutive months: **Provided**, That such cooperative must meet the definition of a cooperative set forth in § 1002.77 (a)(1).

(3) Any other cooperative handler who does not operate a plant if such cooperative meets the definition of a cooperative set forth in § 1002.77 (a)(1) subject to the conditions of this section.

(4) For the months specified in paragraph (a)(4)(i) or (ii) of this section, any other handler operating a unit in any of the months of April, May, or June which unit had for such month any skim milk or butterfat classified as Class I-A milk in the marketing area (on some basis other than failure to account for such milk) and had a total Class I-A and Class I-B classification in a percentage at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year.

(i) Such month.

(ii) Each of the months through March following such month except for any month when the Class I-B or combined Class I-A and Class I-B of such unit is less than 60 percent.

(b) The handler may establish the units in any manner chosen by him, subject to the following limitations:

(1) Each unit shall have a headquarters where the basic record of receipts and butterfat tests of milk from each farm are maintained and where there is maintained the basic record of each receipt and each delivery of milk by each tank truck receiving milk from farms of the unit and related details with respect to the movement of such milk.

(2) Each unit shall be given a name indicating the general geographic area in which farms comprising such unit are located.

(3) The handler shall declare whether each unit is to be operated as a pool unit. Farms from which the milk is to be pooled shall be established in a separate unit from those which are not to be pooled.

(4) Farms in the area specified in paragraph (e) of this section shall be in units separate from farms in the area specified in paragraph (f) of this section.

(c) Except as set forth in paragraph (c)(1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: **Provided**, That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless such handler's Class I-A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case the handler may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I-A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status, except as excluded from the pool milk definition pursuant to § 1002.14 (d), only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed

§ 1002.25 (c)(1) - § 1002.25 (d)

after the 10th day of the month, the effective date shall be the first day of the following month except as specified in paragraph (c)(5) of this section.

(2) In the period of December through June, no new pool unit may be established, no nonpool or partial pool unit may be declared to be a pool unit, and no farm may be added to a pool unit if the handler caused, as specified in paragraph (d) of this section, any pool unit or any farm of a pool unit to become nonpool in the period of July through November immediately preceding: **Provided**, That this limitation shall not prevent the handler from including in a pool unit a farm which for the first time has converted from can delivery to bulk tank delivery and from which the handler received as pool milk all milk delivered by such farm in cans for a period of 30 days immediately preceding: **Provided further**, That, except in the case set forth in paragraph (d)(3) of this section, this paragraph (c)(2) shall not be applicable if the farm which is caused to become nonpool thereby becomes a producer farm under an other order with a provision for marketwide equalization.

(3) No farm which was caused to become nonpool may be made a part of a pool unit by a handler set forth in paragraph (c)(3)(i) through (iv) of this section until after the passage of a complete April-May-June period following the time such farm was caused to become nonpool:

(i) The handler who caused the farm to become nonpool.

(ii) The handler or other person who received the milk as nonpool milk.

(iii) A handler who is substantially under the same management, control, or ownership as the handler or other person set forth in paragraph (c)(3)(i) or (ii) of this section.

(iv) A handler who receives the milk through arrangement with the handler or other person set forth in paragraph (c)(3)(i), (ii), or (iii) of this section.

(4) A handler may transfer a farm from one pool unit to another of the handler's pool units on the first day of any month upon notice to the market administrator by not later than the 10th day of such month.

(5) A farm shall automatically be added to a pool unit or a nonpool unit shall automatically become a pool unit effective the first day of any month in which any of the skim milk or butterfat in milk of such farm or unit is assigned pursuant to § 1002.45 to Class I-A milk unless the handler is precluded from doing so pursuant to paragraph (c)(2) or (3) of this section or unless such milk is considered producer milk under an other order with a provision for marketwide equalization. If some but not all skim milk or butterfat in milk received from such farms previously a part of a nonpool unit is assigned to Class I-A milk the handler operating such unit has until the time of filing the report required pursuant to § 1002.30 to specify which farms are to be added to a pool unit and if upon verification by audit the market administrator finds that other skim milk or butterfat in milk of a declared nonpool unit is assigned to Class I-A milk, the handler operating such unit has until ten days after notification by the market administrator to specify which farms are to be added to a pool unit. In absence of such specification, all eligible farms shall be added to the pool unit.

(d) A handler may cause a pool unit or a farm which is a part of a pool unit to become nonpool by the methods set forth in paragraph (d)(1) through (4) of this section: **Provided**, That the failure of a unit to meet the pool requirements set forth in paragraph (f) of this section shall not be considered for purposes of this paragraph to be a change of pool status caused by the handler:

§ 1002.25 (d) - § 1002.25 (h)

Provided further, That a handler pursuant to paragraph (a)(4) of this section must continue in a pool unit any farm which was a part of such handler's pool unit in any of the months of April, May, or June preceding from which the handler receives milk or from which any other handler receives milk through arrangement with him: **Provided further**, That if a unit operated by a handler is reported by another handler which is a cooperative, the actions specified in paragraph (d)(1), (2), and (4) of this section must be concurred in by such cooperative handler.

(1) The handler may change the status of a declared pool unit to a declared nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(2) The handler may transfer a farm from a pool unit to a nonpool unit effective the first day of any month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month.

(3) The handler may so operate a unit located in the area specified in paragraph (e) of this section that its pool status is canceled pursuant to § 1002.27.

(4) The handler may arrange for the milk of a farm in the handler's pool unit to be delivered to another person as nonpool milk. Any delivery of milk by a farm in a handler's pool unit to another person as nonpool milk shall be considered to have been arranged by such handler unless such handler can establish that such other person is not substantially under the same management, control, or ownership as such handler and that such handler was in no way a party to such nonpool delivery.

(e) A declared pool unit must be operated to meet the requirements set forth in § 1002.26 if the farms of such unit are located in the following area: New York; New Jersey; the counties of Addison, Rutland, and Bennington in Vermont; the county of Berkshire in Massachusetts; or in Pennsylvania. Failure to meet such requirements shall make such declared pool unit subject to suspension and cancellation pursuant to the procedure set forth in § 1002.27. This paragraph shall not be applicable to a cooperative handler specified in paragraph (a)(3) of this section.

(f) A declared pool unit made up of farms located outside the area specified in paragraph (e) of this section or a declared pool unit made up of farms specified in paragraph (e) of this section and operated by a cooperative handler specified in paragraph (a)(3) of this section shall be a pool unit in the months of July through March if at least 25 percent of the milk in such unit is delivered in such month to pool plants, and shall be a pool unit in the months of April through June only if 60 percent of the milk of such unit was received at pool plants during the period of October through December immediately preceding or if such handler received no milk of such unit or from farms of such unit in the preceding October through December.

(g) Any unit declared to be a pool unit shall be designated a pool unit in any month (1) if the handler is qualified in such month pursuant to paragraph (a) of this section, (2) if such unit meets all the requirements of this section applicable to it to be a pool unit, or (3) if the designation of such unit has not been canceled pursuant to § 1002.27.

(h) Each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

§ 1002.25 (i) - § 1002.26 (a)

(i) Whenever the market administrator finds that a handler has received bulk tank milk from a farm required to be included in an established unit but which has not been so included, the market administrator shall tentatively assign such farm to a unit and promptly notify the handler of such action. Unless otherwise requested by the handler within ten days of such notice, the tentative assignment by the market administrator will become final.

(j) Whenever the market administrator finds that a handler has caused milk to become nonpool pursuant to paragraph (d)(4) of this section the market administrator shall promptly notify the handler of such finding. Within ten days of such notice the handler may, except as to any such milk pooled under an other order:

(1) Make a written claim that the failure to include the milk involved as pool milk was an error and, in such event, the market administrator shall pool such milk and rescind the finding, or

(2) Make a written offer to submit proof that the handler had not caused such milk to become nonpool. In the latter event, the market administrator shall examine such proof and shall either rescind the original finding or confirm it. Failure to respond to the market administrator's notice shall be deemed to confirm the finding.

(k) Units other than those which are pool units pursuant to paragraph (g) of this section shall be designated partial pool units if they meet the provisions set forth in paragraph (k)(1) and (2) of this section.

(1) Any nonpool unit which would have been automatically made a pool unit pursuant to paragraph (c)(5) of this section except that the handler is precluded from adding farms thereof to a pool unit pursuant to paragraph (c)(2) or (c)(3) of this section. If a unit of a handler becomes a partial pool unit pursuant to this paragraph, all of the handler's pool units and partial pool units shall be combined and the skim milk and butterfat in milk of the partial pool units assigned to Class II and Class III of such combined total prior to any skim milk and butterfat in the partial pool unit milk being assigned to Class I-A.

(2) Any unit, the milk of which fails to meet the pooling requirements of paragraph (f) of this section, or any unit operated by a handler not specified in paragraph (a) of this section as being eligible to establish and maintain pool units, or any unit made up of farms located in the 401 miles and over freight zone unless the handler operating such unit is eligible to establish a pool unit and has specifically requested such unit to be so designated.

(l) The market administrator shall publicly announce the names of handlers establishing pool units and the names and headquarters of such units. The market administrator shall also publicly announce any change in the pool status of such units and the names of handlers who are ineligible to add farms to a pool unit under the terms set forth in paragraph (c)(2) of this section.

§ 1002.26 Operating requirements.

The person operating a pool plant designated pursuant to § 1002.24 or a declared pool unit consisting of farms in the area specified in § 1002.25 (e) shall stipulate to each of the following requirements:

(a) Be willing to dispose of as Class I-A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this

§ 1002.26 (a) - § 1002.27 (b)

requirement, the Class I-A and Class I-B milk of such plant through the partial pool plant and partial pool unit provisions shall be priced and equalized from the effective date of cancellation through the following June 30:

(b) Keep such control over the sanitary conditions under which milk received at the plant or on the unit is produced and handled that the milk can meet the requirements of a source of milk for the marketing area: *Provided*, That approval by a health authority of the plant as a source of milk for the marketing area shall constitute sufficient evidence that this requirement is being met even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant; and

(c) Have no commitments for disposition of milk that prevent the pool plant or pool unit operator from utilizing milk as set forth in § 1002.27 (h).

§ 1002.27 Suspension and cancellation of designation.

The designation of a pool plant pursuant to § 1002.24 or of a declared pool unit consisting of farms in the area specified in § 1002.25 (e) may be suspended or canceled under any of the following provisions:

(a) The designation shall be canceled effective on the first of the month following the filing with the market administrator, and on a form prescribed by him, of an application by the handler operating the plant: *Provided*, That a plant whose designation is so canceled on the first of any of the months of August through November shall be a pool plant if it meets the provisions of § 1002.28 (e), and shall not be a pool plant pursuant to any other provision of this order prior to December 1 following such cancellation: *Provided further*, That such application for cancellation shall be accompanied by proof that the handler, if not a cooperative association qualified pursuant to § 1002.77, has notified any qualified cooperative association which has any members who deliver milk to such plant, and has notified individually all producers delivering to such plant who are not members of such qualified cooperative association, of the handler's intention to make such application: *Provided further*, That if 50 percent or more of the producers delivering milk at such plant deliver such milk for the account of a cooperative association which does not operate the plant but for which milk such association receives payment, an application must be made by such cooperative association as well as by the handler operating the plant: *Provided further*, That if a handler applies for a replacement designation pursuant to § 1002.24 (b), the designation of the plant or plants replaced shall be canceled automatically at the time the replacement designation becomes effective.

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of health approval is a temporary condition covering a period of not more than 15 days: *Provided*, That the designation of a plant approved by a health authority as a source of milk for the marketing area, even though such approval is restricted to prohibit shipment to the marketing area of milk for specified periods during which permission is given by such health authority for receiving unapproved milk or skim milk at the plant or for shipment of approved skim milk from such plant, shall not be suspended pursuant to this provision.

(c) The designation of a plant pursuant to § 1002.24 shall be suspended at the beginning of the second month following any consecutive 12-month period in which the plant failed to receive any pool milk or at the beginning of the second month following a month in which there is a failure to maintain the facilities and equipment that constitute a plant pursuant to § 1002.8 (a).

(d) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (h) and (j) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in § 1002.26: **Provided**, That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to § 1002.77, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

(e) In the case of suspension pursuant to this section of the designation of one or more plants or units for failure to meet the requirements of § 1002.26 (a) or (c) the handler operating such plant or unit may select, prior to the effective date of such suspension, one or more other pool plants or pool units consisting of farms in the area specified in § 1002.25 (e) for suspension in lieu thereof if, during the preceding month, the quantity of pool milk received from producers at such substituted plants or units was not less than the quantity of pool milk received from producers at the plants or units named for suspension. The handler may also select the order in which plant or unit designations are to be canceled in the event of a later determination by the Secretary canceling the designation of some but not all of the plants or units suspended.

(f) Not later than ten days after the effective date of suspension of designation pursuant to this section, the handler operating the plant or unit may apply to the Secretary for a review. If the handler fails to so apply for such review, the designation shall be canceled as of the effective date of the suspension. If the handler does so apply, the Secretary shall, after review, either determine that the requirements set forth in § 1002.26 have been met and order the suspension revoked, or determine that such requirements have not been met and order the designation canceled as of the effective date of the suspension: **Provided**, That, if the Secretary has made no determination within two months after the end of the month in which the suspension was made effective, but later orders the designation canceled, such cancellation shall be effective as of the first of the month following the date of such determination.

(g) Beginning with the effective date of a suspension pursuant to this section, and until the Secretary has either ordered the designation canceled or ordered the suspension revoked, the plant or unit shall be treated as a pool plant or pool unit: **Provided**, That all payments into or out of the producer settlement fund (except such payments on the basis of operations during a month in which the plant meets the requirements of § 1002.28 or the unit meets the requirements of § 1002.25 (g)) shall be held in reserve by the market administrator until an order is issued by the Secretary, but not longer than two months after the end of the month in which the suspension was made effective.

(h) No pool plant or pool unit designation shall be suspended for failure to meet the requirements of § 1002.26 (a) except under the following conditions or pursuant to paragraph (l) of this section:

- (1) A meeting has been held no sooner than three days after notice by the market administrator to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting

§ 1002.27 (h)(1) - § 1002.27 (i)(4)

of farms in the area specified in § 1002.25 (e) for consideration of the desirable utilization of milk received from producers during a period ending not later than the end of the second month after the month during which such meeting is held.

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25 (e) the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in paragraph (h)(1) of this section. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I-A in the marketing area, and may include all or a part of other Class I-A and Class I-B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to paragraph (h)(2) of this section: **Provided**, That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

(i) The cancellation of pool plant or pool unit designation for failure to meet the requirements of § 1002.26 (a) shall be subject to the following conditions:

(1) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized the milk received by the handler from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) or paragraph (l) of this section.

(2) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section a percentage of the total milk received by such handler from producers during the month in which the suspension is made effective which is not less than the percentage of the total pool milk reported by all handlers for such month to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant or unit is reported to the market administrator by a cooperative association qualified pursuant to § 1002.77 and such association pays the producer for such milk, the pool plant or pool unit designation shall not be canceled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section, or in accordance with the percentage set forth in paragraph (i)(2) of this section.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in paragraph (l) of this section, or in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

§ 1002.27 (j) - § 1002.28 (b)

(j) Loss of approval by health authorities of a plant as a source of milk for the marketing area may in itself constitute adequate reason for the market administrator to suspend the designation of the plant for failure to meet the requirements of § 1002.26 (b) only if the absence of such approval continues for more than 15 days.

(k) The designation shall be canceled effective on the first of the month following three consecutive months if in the absence of this designation milk received from dairy farmers and units at the plant would have been classified and priced under an other order with a provision for marketwide equalization and if in each of such months the percentage of milk received from dairy farmers and units at the plant which is classified as Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area.

(l) The designation of any pool plant pursuant to § 1002.24 or any pool unit pursuant to § 1002.25 (e) shall be canceled unless 5 percent or more of the pool milk received from producers at such plant or by such unit during each of the months of December and January, and 10 percent during each of the months of September through November, is utilized as Class I-A milk unless the percentage has been revised pursuant to paragraph (h) of this section.

§ 1002.28 Temporary pool plants.

Except for plants which, pursuant to paragraph (f) of this section, are not eligible for designation, any plant not designated pursuant to § 1002.24 shall automatically be designated a pool plant in accordance with provisions of paragraphs (a) through (e) of this section: **Provided**, That no plant shall be a pool plant pursuant to this section if, in the absence of this provision, milk received from dairy farmers and units at the plant would be classified and priced under an other order with a provision for marketwide equalization, and if the percentage of the milk received from dairy farmers and units at the plant which is classified in Class I-A and disposed of in the marketing area defined in such other order is greater than the percentage of such milk so classified and disposed of in this marketing area: **Provided further**, That for purposes of the computations of percentages set forth in this section, skim milk and butterfat in filled milk shall be excluded from skim milk and butterfat classified in Class I-A and Class I-B.

(a) For any of the months of January through March and July through December, any plant at which 25 percent or more of the combined receipts of skim milk and butterfat in milk from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk, shall automatically be designated a pool plant for such month: **Provided**, That at the option of the handler the plant shall not be a pool plant if less than 25 percent of such combined receipts of skim milk and butterfat in milk from other than pool units is classified in such Class I-A.

(b) For any of the months of April, May, or June, any plant at which during the preceding period of October, November, and December either (1) no milk was received from dairy farmers or units, or (2) 60 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units was classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk, shall automatically be designated a pool plant for any of such months of April, May, or June in which 10 percent or more of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than the failure to account for such milk:

Provided, That at the option of the handler the plant shall not be a pool plant if less than 10 percent of combined receipts of skim milk and butterfat in such milk from other than pool units is classified in such Class I-A.

(c) Any plant which is a pool plant in any of the months of April, May, or June on the basis of paragraph (b) of this section or on the basis of paragraph (d) of this section and in the latter case, the percentage of combined receipts of skim milk and butterfat in milk from dairy farmers and units classified in Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month of the previous year, shall be a pool plant in any of the months of July through March following in which 60 percent or more of the combined receipts of skim milk and butterfat in milk received at the plant from dairy farmers and units is classified in Class I-A, Class I-B, or Classes I-A and I-B combined.

(d) Any plant which for any month is not a pool plant because of failure to meet the requirements of paragraph (a), (b), or (c) of this section shall be a pool plant in any month in which a daily average of at least 800 pounds of combined receipts of skim milk and butterfat in milk received from dairy farmers and units is classified as Class I-A in the marketing area or as Class I-A on the basis of a transfer to a pool plant, on some basis other than failure to account for such milk, and if the percentage of combined receipts of skim milk and butterfat in milk classified as Class I-A and Class I-B is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year: **Provided**, That at the option of the handler the plant shall not be a pool plant if none of the skim milk or butterfat in such milk from other than pool units is classified in such Class I-A: **Provided further**, That such plant shall not be a pool plant on the basis of this paragraph if it is located in the 401 miles and over freight zone.

(e) A plant whose regular pool plant designation has been canceled at the request of the handler on the first of any of the months of August through November shall be a pool plant in any month through November 30 following such cancellation if the percentage of the combined receipts of skim milk and butterfat in milk received from dairy farmers and units classified in Class I-A, Class I-B, or Classes I-A and I-B combined is at least as great as the market percentage of pool milk in Classes I-A and I-B for the same month in the preceding year unless such plant qualifies as a pool plant under an other order with a provision for marketwide equalization.

(f) A plant shall not be a pool plant on the basis of this section for the periods and under the conditions set forth in paragraph (f)(1) and (2) of this section:

(1) If the pool plant designation was canceled on the first of August, September, October, or November pursuant to § 1002.27 (a), for the period through November 30 except as specified in paragraph (e) of this section.

(2) If the pool plant designation was canceled pursuant to § 1002.27 for failure to meet the requirements of § 1002.26 (a), for the period from the date the cancellation was effective through the following June 30.

(g) At the time of announcing the uniform price for each month, the market administrator shall make public the location and name of the operator of any plant for which a report of receipts from dairy farmers was used in the computation of that uniform price.

§ 1002.29 Partial pool plants.

The following plants not designated pool plants pursuant to §§ 1002.24 and 1002.28, which plants distribute fluid milk products in the marketing area or transfer fluid milk products to a pool plant shall be designated partial pool plants:

(a) Plants set forth in § 1002.28 (f).

(b) Plants other than those set forth in paragraph (a) of this section which have some skim milk or butterfat in milk received from dairy farmers or nonpool units classified in Class I-A on some basis other than failure to account for such milk, except a plant which would otherwise qualify as a pool plant pursuant to § 1002.28 (d) but which has less than a daily average of 800 pounds of skim milk or butterfat in milk received from dairy farmers or units classified in Class I-A in the marketing area on some basis other than failure to account for such milk.

REPORTS

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. Such report shall be physically received at the office of the market administrator no later than the close of business on the 10th day of the month. Other information required to be reported no later than the 10th day of the month pursuant to §§ 1002.25 and 1002.31 must also be physically received by the market administrator no later than the 10th day of the month.

(a) The quantity of skim milk and butterfat contained in:

- (1) Receipts of milk from producers;
- (2) Receipts of fluid milk products from other pool plants or partial pool plants and from pool units or partial pool units; and
- (3) Receipts of other source milk.

(b) Inventories at the beginning and the end of the month of fluid milk products and products specified in § 1002.41 (c)(1);

(c) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including the destination of any fluid milk product, the classification of which wholly or partially depends upon its destination; and

(d) The computation pursuant to § 1002.60 of such handler's net pool obligation.

§ 1002.31 Producer payroll reports.

Each handler shall report with respect to producers as set forth in paragraphs (a) and (b) of this section:

§ 1002.31 (a) - § 1002.40

(a) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators; and

(b) On or before the last day of each month such handler's producer payroll for the preceding month, which shall show for each producer:

- (1) The total pounds of milk from such producer;
- (2) The average butterfat content of such milk: *Provided*, That if no butterfat tests are made on any of the milk received from producers, and if such milk is received by the handler from no more than ten producers, 3.5 percent shall be reported as the average butterfat test of milk received from producers;
- (3) The amount of payment due each producer;
- (4) The nature and amount of any deductions and charges made by the handler;
- (5) The net amount of payment to such producer; and
- (6) Such other information with respect thereto as the market administrator shall require.

§ 1002.32 Other reports.

At such time as the market administrator may request, each handler shall report to the market administrator in the manner and on forms prescribed by the market administrator:

- (a) The quantities of skim milk and butterfat in milk and each milk product received at the handler's nonpool plants from dairy farmers, from other plants or nonpool units, from such handler's own farm, from other handlers, and from other sources;
- (b) The quantities of skim milk and butterfat in milk and each milk product moved out of, or on hand at, the handler's nonpool plants and the destination of such skim milk and butterfat;
- (c) Information concerning land, buildings, surroundings, facilities, and equipment at any of the handler's plants;
- (d) The current receipts and utilization of skim milk and butterfat at each of the handler's pool plants and pool units; and
- (e) Such other information as may be necessary for the administration of the provisions of this part.

CLASSIFICATION

§ 1002.40 General classification rules.

All skim milk and butterfat required to be reported by each handler pursuant to §§ 1002.30 and 1002.32 shall be classified each month pursuant to the provisions of §§ 1002.41 through 1002.46, subject to the following conditions:

§ 1002.40 (a) - § 1002.41 (b)(1)

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1002.30, including the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1002.40 through 1002.44;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids; and

(c) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1002.45. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1002.45 on a pro rata basis, unless a specific use of such receipts is established by the handler.

(d) Class III-A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III-A shall be determined by prorating receipts from pool sources to Class III-A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant or unit.

§ 1002.41 Classes of utilization.

Subject to the conditions set forth in §§ 1002.42 through 1002.46, the classes of utilization shall be as follows:

(a) **Class I-A milk.** Class I-A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product, except as otherwise provided in paragraphs (c) and (d) of this section:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order; and

(v) To a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market;

(2) In packaged inventory of fluid milk products at the end of the month;

(3) In shrinkage assigned to Class I-A pursuant to § 1002.42 (c); and

(4) Not specifically accounted for as Class I-B, Class II or Class III milk.

(b) **Class I-B milk.** Class I-B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside this or any other Federal order marketing area, except for:

§ 1002.41 (b)(1)(i) - § 1002.41 (d)(1)

(i) Milk moved to a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market; and

(ii) Inventory of packaged fluid milk products at nonpool plants that are not other order plants.

(2) In shrinkage assigned to Class I-B pursuant to § 1002.42 (c).

(c) **Class II milk.** Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (d) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (c)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to a commercial food processor if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream and sour half-and-half, sour cream mixtures containing nonmilk items, yogurt and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(d) **Class III milk.** Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

§ 1002.41 (d)(1)(i) - § 1002.42 (a)(1)

(i) Cream cheese and other spreadable cheeses, and hard cheeses of types that may be shredded, grated, or crumbled, and are not included in paragraph (c)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat and butteroil;

(iii) Any milk product in dry form, except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (c)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (c)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (c)(4)(i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (c)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (c)(4)(i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (c)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (c)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1002.15 and the fluid cream product definition pursuant to § 1002.18; and

(7) In shrinkage assigned pursuant to § 1002.42 (a) to the receipts specified in § 1002.42 (a)(2) and in shrinkage specified in § 1002.42 (b) and (c).

(e) *Class III-A milk.* Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

§ 1002.42 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1002.30, the following shall be determined:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (5) of this section on which shrinkage is allowed pursuant to such paragraph; and

§ 1002.42 (a)(2) - § 1002.44 (a)(3)

(2) In other source milk not specified in paragraph (b)(1) through (5) of this section, which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers, in milk received from pool units, and in milk received from units other than pool units, exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), excluding the quantity for which Class II or Class III classification is requested by the handler; and

(5) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1) through (4) of this section; and

(c) Shrinkage in excess of the amounts assigned to Class III pursuant to paragraphs (a) and (b) of this section shall be assigned pro rata to Class I-A and Class I-B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

§ 1002.44 Transfers.

(a) **Transfers to pool plants.** Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant or a pool unit to another pool plant shall be classified as Class I-A milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

- (1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1002.45 (a)(17) and the corresponding step of § 1002.45 (b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;
- (2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1002.45 (a)(8) or the corresponding step of § 1002.45 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and
- (3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1002.45 (a)(13) or (15) or the corresponding steps of § 1002.45 (b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

1002.44 (b) - § 1002.44 (d)(2)

(b) **Transfers to other order plants.** Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner:

- (1) If transferred as packaged fluid milk products, classification shall be in the classes (either Class I-A, II or III) to which allocated as a fluid milk product under the other order;
- (2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);
- (3) If the operators of both the transferor and the transferee plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;
- (4) If information concerning the classes to which such transfers were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I-A, subject to adjustment at a later date;
- (5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I-A milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and
- (6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1002.41.

(c) **Transfers to producer-handlers.** Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order shall be classified:

- (1) As Class I-A milk, if transferred in the form of a fluid milk product; and
- (2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with

Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) **Transfers to other nonpool plants.** Skim milk or butterfat transferred in the following forms from a pool plant or a pool unit to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

- (1) As Class I-A milk, if transferred in the form of a packaged fluid milk product; and
- (2) As Class I-A milk, if transferred in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

§ 1002.44 (d)(2)(i) - § 1002.44 (d)(3)(vi)

(i) The transferring handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in the handler's report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(ii) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(iii) In determining the nonpool plant's utilization for purposes of this section, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a second nonpool plant shall be classified pursuant to the same assignment procedure with respect to receipts and utilization at such second nonpool plant, except that classification of such transfers in Class I-A and I-B shall not be less than the quantities which would be assigned to those classes if the transfer of such products had been directly from a pool plant or pool unit.

(3) Skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at the transferee plant pursuant to paragraph (d)(2)(ii) of this section:

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to Class I-B route sales.

(ii) Such bulk transfers and other bulk receipts of fluid milk products at such transferee plant from pool plants and units and from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

(iii) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I-B, Class II and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I-A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Receipts of bulk fluid cream products from plants defined pursuant to § 1002.8 (b) and (d) shall be assigned pro rata among such plants to any remaining Class II and Class III utilization on a pro rata basis, then to any remaining Class I-A disposition and finally any Class I-B disposition.

(vi) Any remaining receipts of fluid milk products or bulk fluid cream products being assigned pursuant to this paragraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I-A utilization, then to Class I-B utilization, then to Class II utilization, and finally to Class III utilization at such plant: **Provided**, That if on

inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I-A.

§ 1002.44 (d)(3)(vii) - § 1002.45 (a)(7)

(vii) Any remaining Class I-A route disposition in any Federal marketing area shall be subject to the pricing specified in § 1002.60 (d)(2).

§ 1002.45 Allocation of skim milk and butterfat classified.

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraphs (a), (b), and (c) of this section: *Provided*, That for the purpose of establishing the pool status of any plant with Class I-A route disposition in the marketing area which is not a pool plant pursuant to § 1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to § 1002.28 (a) or (b) shall be considered the source of such Class I-A route disposition of such plant and be subtracted from Class I-A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing the handler's report pursuant to § 1002.30 the handler elects not to have it so allocated.

(a) Skim milk shall be allocated in the following manner:

- (1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1002.42 (b);
- (2) Subtract the pounds of skim milk received in packaged form from a producer-handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I-A and Class I-B milk, respectively, in accordance with its proportionate disposition in such classes;
- (3) Subtract from the remaining pounds of skim milk in Class III, 2 percent of the pounds of skim milk in packaged fluid milk products received from other order plants, and subtract the balance from Class I-A;
- (4) Subtract from the remaining pounds of skim milk in Class I-A the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(4) or comparable provisions of another Federal milk order in the immediately preceding month;
- (5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41 (c)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;
- (6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41 (c)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(6) or comparable provisions of another Federal milk order in the immediately preceding month;
- (7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1002.41 (c) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1002.41(d)(6)), but not in excess of the pounds of skim milk remaining in Class II.

§ 1002.45 (a)(8) - § 1002.45 (a)(13)(i)

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class I-A, Class II and Class III milk, in series beginning with Class III, the pounds of skim milk in:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1002.41(c)(1) that was not subtracted pursuant to paragraphs (a)(5), (a)(6) and (a)(7) of this section;

(ii) Receipts of fluid milk products not approved by a duly constituted health authority which are excepted from the pool milk definition pursuant to § 1002.14 (b);

(iii) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to § 1002.12 (except pool milk designated in the preamble of § 1002.14);

(iv) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to § 1002.14 (h);

(v) Receipts of fluid milk products from a handler with own farm milk, which milk is excepted from the pool milk definition pursuant to § 1002.14 (i);

(9) Subtract in series beginning with Class III from the pounds of skim milk remaining in Class II and Class III milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in § 1002.8 (b) or (d) and units other than pool units for which the handler requests a Class II or Class III classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(10) Subtract from the remaining pounds of skim milk in Class II or Class III milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II or Class III classification is requested by both the transferor and transferee handlers in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(11) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1002.41 (c)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(4), (6) and (8)(i) of this section;

(12) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(13)

(i) Subtract pro rata from the pounds of skim milk remaining in Class I-B, Class II, and Class III milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to § 1002.8 (b) or (d) and from units other than pool units: **Provided**, That if the pounds of skim milk to be assigned pursuant to this paragraph (a)(13)(i) exceed the available pounds of skim milk in Class I-B, Class II, and Class III the handler shall designate the priority of sources to be assigned to such classes;

§ 1002.45 (a)(13)(ii) - § 1002.45 (a)(15)(iv)

(ii) No assignment shall be made pursuant to this paragraph with respect to milk received from a plant not defined pursuant to § 1002.8 (b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I-A;

(14) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to § 1002.14 (h) and (i);

(15) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraph (a)(3) and (10) of this section:

(i) Subject to the provisions of this paragraph, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class II and Class III milk combined:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1002.22(d); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(15)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I-A milk and Class I-B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I-A milk and Class I-B milk combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I-A milk or Class I-B milk that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as

§ 1002.45 (a)(15)(iv) - § 1002.45 (c)

necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount in sequence beginning with the nearest other pool plant of such handler at which Class I-A or Class I-B utilization is available;

(16) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as Class I-A, subtract pro rata from the remaining pounds of skim milk in each class the

pounds of skim milk in receipts of fluid milk products from plants in the 401 miles and over freight zone, not defined pursuant to § 1002.8 (b) or (d);

(17) Subtract from the remaining pounds of skim milk in Class I-A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to paragraph (a)(13) and (16) of this section;

(18) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products and bulk fluid cream products from other pool plants and from pool units (not previously assigned pursuant to the preamble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of paragraph (a)(18)(i) through (iii) of this section:

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to paragraph (a)(7) of this section the skim milk so transferred shall be classified so as to allocate the least possible Class I-A or I-B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to paragraph (a)(13) of this section, the skim milk so transferred shall not be classified as Class I-A or I-B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(19) Add to the remaining pounds of skim milk in Class I-A the pounds of skim milk received directly from dairy farmers or units which was deducted pursuant to the proviso in the preamble of this section;

(20) If the pounds of skim milk remaining in all classes exceeds the pounds of skim milk in receipts from producers subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

§ 1002.46 Rules and regulations.

Accounting rules and regulations to effectuate the provisions of §§ 1002.40 through 1002.45 shall be issued by the market administrator and shall include (but not be limited to) conversion factors to be used in the absence of specific weights and tests, specific definitions of products, specific shrinkage allowances and procedures for determining the quantities of skim milk and butterfat disposed of in specified products. Such rules and regulations shall be made, and may from time to time be amended, by the market administrator in accordance with the procedure set forth in this section: *Provided*, That at any time upon a determination by the Secretary that an emergency exists which requires the immediate adoption of rules and regulations, the market administrator may issue, with the approval of the Secretary, temporary rules and regulations without regard to the following procedure: *Provided further*, That, if any interested person makes written request for the issuance, amendment, or repeal of any rule, the market administrator shall within 30 days either issue notice of meeting pursuant to paragraph (a) of this section or deny such request and except in affirming a prior denial, or where the denial is self-explanatory, shall state the grounds for such denial: *Provided further*, That if the market administrator finds it necessary to promulgate formal rules with respect to units, the market administrator shall follow the procedure set forth in this section.

- (a) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator at which time all interested persons shall have opportunity to be heard. Notice of such meeting shall be given by the market administrator, and a copy of the proposed rules and regulations shall be sent at least five days prior to the date of the meeting to all handlers operating pool plants. A stenographic record shall be made at all such meetings and such record shall be public information available for inspection at the office of the market administrator.
- (b) A period of at least five days after the meeting held pursuant to paragraph (a) of this section shall be allowed for the filing of briefs. Such briefs shall be public information available for inspection at the office of the market administrator.
- (c) Not later than 30 days after a meeting held pursuant to paragraph (a) of this section, the market administrator shall issue and send to all handlers operating pool plants and pool units the tentative rules and regulations or amendments thereto relating to the issues considered at such meeting, or a tentative notice that no rules or regulations or amendments thereto are to be issued prior to further consideration at another meeting. The tentative rules and regulations, or tentative notice, together with copies of the stenographic record and briefs, shall also at the same time be forwarded by the market administrator to the Secretary.
- (d) Not later than 30 days after issuance by the market administrator, the Secretary shall either approve the tentative rules and regulations or tentative notice as issued, or direct the market administrator to reconsider. In which latter event, the market administrator shall within 30 days either issue revised tentative rules and regulations or tentative notice, or call another meeting pursuant to paragraph (a) of this section.
- (e) The tentative rules and regulations and amendments thereto or tentative notice issued pursuant to paragraph (c) of this section shall be effective as of the first of the month following approval by the Secretary, but not sooner than ten days after issuance by the market administrator.

MINIMUM PRICES

§ 1002.50 Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.52 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last day of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.52 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) *Class I-A price.* For Class I-A milk the Class I price in the 201-210 mile freight zone shall be the basic formula price for the second preceding month plus \$2.42. The differential value in the 1-10 mile freight zone shall be \$3.14.

(b) *Class I-B price.* For Class I-B milk the price shall be the price for Class I-A milk.

(c) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

(d) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

<u>Month</u>	<u>Amount</u>	<u>Month</u>	<u>Amount</u>
January	+ .03	July	+ .03
February	+ .02	August	+ .10
March	- .05	September	+ .06
April	- .09	October	+ .06
May	- .12	November	+ .06
June	- .11	December	+ .06

(e) *Class III-A price.* The Class III-A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (d) of this section for the applicable month.

§ 1002.51 - § 1002.51 (c)

§ 1002.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1002.81 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

- (i) Multiply the Grade AA butter price by 4.27;
- (ii) Multiply the nonfat dry milk price by 8.07; and
- (iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

- (i) Multiply the Cheddar cheese price by 9.87; and
- (ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

§ 1002.51 (d) - § 1002.52 (b)

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent reporting period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

§ 1002.52 Transportation differentials.

The class prices set forth in § 1002.50 shall be subject to a transportation differential determined in accordance with paragraphs (a) through (e) of this section.

(a) The market administrator shall determine a freight zone for each pool plant and each partial pool plant. Such freight zone shall be the shortest highway mileage from the plant to the nearest of the following points as computed by the market administrator from data contained in Mileage Guide No. 5, without supplements, issued on July 20, 1949, effective August 21, 1949, by the Household Goods Carriers' Bureau, Agent, Washington, DC: Mount Vernon or Yonkers in the State of New York; Tenafly, Glen Ridge, East Orange, Elizabeth, Hackensack, Hillside, Irvington, or Passaic in the State of New Jersey. The freight zone for plants located in New York City, Nassau and Suffolk counties in the State of New York, or in Essex, Hudson, and Union counties in the State of New Jersey shall be in the 1-10 mile zone. The market administrator shall publicly announce the freight zones for pool plants.

(b) The market administrator shall determine and publicly announce a freight zone for each minor civil division (township, borough, incorporated village, or city) within which farms included in a pool or partial pool unit are located by computing the shortest highway mileage distance from the nearest point in the minor civil division to the nearest point specified in paragraph (a) of this section, using the mileage guide specified in such paragraph supplemented by United States Geological Survey maps. In states where the smallest governmental unit except for incorporated cities or villages is the county, a zone for the county shall be determined in the same manner as for minor civil divisions. The zone for each farm shall be the zone of the minor civil division or county in which the farm is located.

§ 1002.52 (c)

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A	B	C
Freight zone	Classes I-A and I-B	Classes II, III and III-A
<u>miles</u>	<u>cents per cwt.</u>	<u>cents per cwt.</u>
1-10	+72.0	+8
11-20	+69.5	+8
21-25	+67.0	+8
26-30	+67.0	+7
31-40	+64.5	+7
41-50	+62.0	+7
51-60	+59.5	+6
61-70	+57.0	+6
71-75	+32.5	+6
76-80	+32.5	+5
81-90	+30.0	+5
91-100	+27.5	+5
101-110	+25.0	+4
111-120	+22.5	+4
121-125	+20.0	+4
126-130	+20.0	+3
131-140	+17.5	+3
141-150	+15.0	+3
151-160	+12.5	+2
161-170	+10.0	+2
171-175	+7.5	+2
176-180	+7.5	+1
181-190	+5.0	+1
191-200	+2.5	+1
201-210	0.0	0
211-220	- 2.5	0
221-225	- 5.0	0
226-230	- 5.0	0
231-240	- 7.5	0
241-250	-10.0	0

251-260	-12.5	0
261-270	-15.0	0
271-275	-17.5	0
276-280	-17.5	0
281-290	-20.0	0
291-300	-22.5	0
301-310	-25.0	0
311-320	-27.5	0
321-325	-30.0	0
326-330	-30.0	0
331-340	-32.5	0
341-350	-35.0	0
351-360	-37.5	0
361-370	-40.0	0
371-375	-42.5	0
376-380	-42.5	0
381-390	-45.0	0
391-400	-47.5	0
401 and over	-50.0	0

(d) The differential rate applicable to each pool unit or partial pool unit shall be computed each month as follows: Multiply the volume of pool milk received from farms in each zone by the rate for that zone as set forth in the schedule in paragraph (c) of this section, add the resulting values for all zones of the unit, divide such sum by the total volume of milk received by the unit and round to the nearest 0.1 cent. Rates shall be computed separately for columns B and C of such schedule.

(e) In the event that a plant in the 401 miles and over freight zone becomes a pool plant, a 10-mile zone shall be determined for such plant and for each farm in any pool unit delivering to such plant. The column B differentials in paragraph (c) of this section shall be extended at the same rate as provided in such column for such plant or unit: *Provided*, That in no case shall such differential cause the class price or the uniform price for such plant or unit to be less than the Class III price for such plant or unit: *Provided further*, That farms or units delivering to such plant shall be deemed to be in the same zone as the plant.

§ 1002.53 Producer-handler price differential.

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I-A pursuant to § 1002.45 (a)(8)(iii), the transferee handler shall pay a differential equal to the difference between the Class I-A price and the Class III price both appropriately adjusted for differentials pursuant to § 1002.52.

§ 1002.54 Use of equivalent price or index.

If for any reason a price or index specified by this part for use in computing class prices or other purposes is not reported or published in the manner therein described, the market administrator shall use a price or index determined by the Secretary to be equivalent to or comparable with the price or index specified.

§ 1002.55 Transportation credit on bulk unit pool milk.

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

§ 1002.56 Announcement of class prices and butterfat differential.

The market administrator shall announce publicly on or before the fifth day of each month, the following:

- (a) The Class I price for the following month applicable at the 201-210 mile zone and at the 1-10 mile zone;
- (b) The Class II price for the following month applicable at the 201-210 mile zone and at the 1-10 mile zone;
- (c) The Class III and Class III-A prices for the preceding month applicable at the 201-210 mile zone and at the 1-10 mile zone;
- (d) The butterfat differential for the preceding month;

(e) The basic formula price for the preceding month, pursuant to § 1002.51, as reported by the United States Department of Agriculture.

(f) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, using the base month series, for the second preceding month, as reported by the United States Department of Agriculture.

(g) The average price per pound, of Grade A (92-score) butter, at the Chicago Mercantile Exchange, for the preceding month, as reported by the United States Department of Agriculture.

(h) The average price per pound, of nonfat dry milk f.o.b. Western Area, for the preceding month, as reported by the United States Department of Agriculture.

DETERMINATION OF UNIFORM PRICE

§ 1002.60 Net pool obligation of handlers.

Each handler's net pool obligation for milk received at each plant and unit shall be computed separately pursuant to paragraphs (a) through (d) of this section and then combined into one total to be adjusted by any credit applicable pursuant to paragraph (e) of this section to determine the handler's total net pool obligation.

(a) Multiply the quantity of milk in each class remaining after the computation pursuant to § 1002.45 (a)(20) and the corresponding step of § 1002.45 (b) by the applicable class price adjusted by the applicable differential pursuant to § 1002.52;

(b) For each partial pool plant or partial pool unit multiply the quantity of pool milk in each class by the applicable class price adjusted by the applicable differential pursuant to § 1002.52;

(c) Deduct, in the case of each plant or unit nearer than the 201-210 mile zone and add, in the case of each plant or unit farther than the 201-210 mile zone, the sum obtained by multiplying the quantity of pool milk received from dairy farmers by the differential in column B of § 1002.52 (c) applicable at the plant and the weighted average column B differential computed pursuant to § 1002.52 (d) applicable to the unit;

(d) Add the amounts computed in paragraph (d)(1) through (6) of this section:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45 (a)(20) and the corresponding step of § 1002.45 (b) by the applicable class price adjusted by the differentials pursuant to §§ 1002.52 and 1002.81;

(2) Multiply the pounds of skim milk and butterfat in receipts of nonfluid milk products subtracted from Class I-A pursuant to § 1002.45 (a)(8)(i) and the corresponding step of § 1002.45 (b) and the pounds of skim milk and butterfat specified in § 1002.44 (d)(3)(vii) by the difference between the Class I-A and Class III prices, each adjusted by the applicable differential pursuant to § 1002.52;

(3) Multiply the pounds of skim milk and butterfat in receipts of nonfluid milk products assigned to Class I pursuant to § 1002.40 (c) by the difference between the Class I price less \$1.00 (but not to be less than the Class III price) and the Class III price, both adjusted by the applicable differential pursuant to § 1002.52. Alternatively, the handler may, with respect to such receipts of nonfluid milk products processed from producer milk regulated under another Federal order, elect to make payment to the producer-settlement fund of the other order at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk products were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk products is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk products. This payment option shall not apply if the source of the nonfluid milk products used in reconstituted fluid milk products cannot be determined by the market administrator;

(4) Multiply the quantity of skim milk and butterfat in receipts of concentrated fluid milk products from plants other than those defined in § 1002.8 (b) or (d) or as a producer-handler and which are assigned to Class I pursuant to § 1002.40 (c) or which are subtracted from Class I-A pursuant to § 1002.45 (a)(8)(i) and the corresponding step of § 1002.45 (b) by the Class I price, adjusted by the applicable differential pursuant to § 1002.52.

(5) Multiply the producer-handler price differential by the pounds of skim milk and butterfat subtracted from Class I-A pursuant to § 1002.45 (a)(8)(iii) and the corresponding step of § 1002.45 (b);

(6) Multiply the difference between the Class III price for the preceding month and the Class I-A price or the Class II price, as the case may be, for the current month, both applicable at the location of the nearest plant or unit from which an equivalent quantity of Class III milk was received in the preceding month, by the pounds of skim milk and butterfat subtracted from Class I-A and Class II pursuant to § 1002.45 (a)(11) and the corresponding step of § 1002.45 (b).

(e) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

(f) Deduct any credit applicable pursuant to § 1002.55.

§ 1002.61 Computation of the uniform price.

The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of pool milk on all reports, the report of any handler who has not made payment of the last monthly pool debit account rendered pursuant to § 1002.71 shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly

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pool debits. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

- (a) Combine into one total the net pool obligations of all handlers computed pursuant to § 1002.60;
- (b) Subtract the total of payments required to be made pursuant to § 1002.77;
- (c) Subtract an amount computed by multiplying the quantity of pool milk delivered directly from farms to pool plants and partial pool plants that was not put into a tank truck prior to such delivery, by a rate per hundredweight that is equal to the rate specified in § 1002.55;
- (d) [Reserved];
- (e) [Reserved];
- (f) Add the amount of unreserved cash in the producer settlement fund;
- (g) Subtract an amount equal to not less than 8 cents nor more than 9 cents per hundredweight of pool milk and receipts of concentrated fluid milk products for which a payment obligation is computed pursuant to § 1002.60 (d)(4) to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers; and
- (h) Divide the result obtained in paragraph (g) of this section by the total pounds of pool milk delivered by dairy farmers and the total pounds of concentrated fluid milk products for which a payment obligation is computed pursuant to § 1002.60 (d)(4). The result shall be known as the uniform price.

§ 1002.62 Announcement of uniform price.

The market administrator shall publicly announce, on or before the 14th day of each month, the uniform price for the preceding month pursuant to § 1002.61 applicable at the 201-210 mile zone and at the 1-10 mile zone pursuant to § 1002.82.

PRODUCER SETTLEMENT FUND AND ITS OPERATION

§ 1002.70 Producer settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund" into which the market administrator shall deposit all payments and out of which the market administrator shall make all payments pursuant to §§ 1002.72 through 1002.77. All amounts subtracted under § 1002.61 (d), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1002.61 (e).

§ 1002.71 Handler's accounts.

The market administrator shall establish an account for each handler who is required to make payments to the producer settlement fund or who received payments from the producer settlement fund. After computing the uniform price and each handler's pool debit or credit each month, and at such times as the market administrator deems appropriate, the market administrator shall render each handler a statement of the handler's account showing the debit or credit balance, together with all debits or credits entered on such handler's account since the previous statement was rendered: *Provided*, That the handler operating a pool plant receiving milk from a partial pool plant or partial pool unit without producers as defined in § 1002.6, or from a partial pool plant in the 401 miles and over freight zone, shall be responsible for the debit or credit arising on milk so received and for the payment of the administration assessment pursuant to § 1002.85 on such milk.

§ 1002.72 Payments to the producer settlement fund.

On or before the 16th day of each month, each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.71. Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator's office is open for public business.

§ 1002.73 Payments out of the producer settlement fund.

(a) On or before the 17th day of each month, the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.71. If the date by which such payments are to be made falls on a Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator's office is open for public business. If payments to the producer settlement fund under § 1002.72 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer settlement fund is insufficient to make the full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 20th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if the handler reduces the total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer settlement fund.

§ 1002.74 Handler's pool debit or credit.

After computing the uniform price for each month, the market administrator shall compute each handler's pool debit or credit as follows:

(a) Add the amounts computed as follows:

§ 1002.74 (a)(1) - § 1002.77 (a)(3)

- (1) Multiply the quantity of pool milk received by each handler from dairy farmers by the uniform price;
- (2) Multiply the quantity of pool milk received by the handler at a pool plant or partial pool plant directly from farms that was not put into a tank truck prior to delivery by a rate per hundredweight that is equal to the rate specified in § 1002.55;
- (3) Multiply the quantity of concentrated fluid milk products for which a payment obligation is computed pursuant to § 1002.60 (d)(4) by the uniform price.

(b) If the result obtained in paragraph (a) of this section is less than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool debit.

(c) If the result obtained in paragraph (a) of this section is greater than the handler's net pool obligation, the difference shall be entered on the handler's producer settlement fund account as such handler's pool credit.

§ 1002.75 Adjustments of errors in payments.

Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer settlement fund, the market administrator shall debit the handler's producer settlement fund account for any unpaid amount. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall credit the handler's producer settlement fund account for any such amount.

§ 1002.76 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1002.72 and 1002.85 shall be increased 1 percent on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.

§ 1002.77 Cooperative payments for marketwide services.

Payments shall be made to qualified cooperatives or to federations under the conditions, in the manner, and at the rates set forth in this section.

(a) *Definitions.* As used in this section the following terms shall have the following meanings:

- (1) "Cooperative" means a cooperative association of producers which is duly incorporated under the cooperative corporation laws of a state; is qualified under the Capper-Volstead Act (7 U.S.C. 291 *et seq.*); has all its activities under the control of its members; and has full authority in the sale of its members' milk.
- (2) "Federation" means a federation of cooperatives which is duly incorporated under the laws of a state.
- (3) "Federated cooperative" means a cooperative which is a member of a federation and on whose membership the federation is an applicant for or receives payments under paragraph (f)(2) of this section.

(4) "Affiliated cooperative" means a cooperative upon whose entire membership another cooperative, by mutual consent, is an applicant for or receives payments under paragraph (f)(2) of this section.

(5) "Member producer" means, when used with respect to a cooperative or federation which is an applicant for or is receiving payments, a producer as defined in § 1002.6 who has met the following conditions:

(i) The producer is a member of the cooperative or one of its affiliated cooperatives, or in the case of a federation, the producer is a member of one of its federated cooperatives from whom the cooperative, affiliated cooperative, or federated cooperative is receiving at least 1 cent per hundredweight of milk delivered by him: **Provided**, That the cooperative of which the producer is a member is meeting the requirements of this part applicable to it;

(ii) The member producer has been a producer, or the producer's farm, as defined in § 1002.10, had been the farm of a producer for at least a prior 12-month period; and

(iii) The producer has not for a prior 12-month period been a member producer of another cooperative or federation: **Provided**, That in the case of membership transfers resulting from mergers of designated organizations, or from affiliation, federation, or merger of cooperatives not previously meeting the definition of paragraph (a)(3) or (4) of this section, this subdivision shall not apply.

(6) "Marketwide services" means services performed by cooperatives or federations, as defined herein, which benefit all producers in the marketing of their milk under this order; such services are not limited to those specified in paragraph (e)(1) through (6) of this section and may include services directly or indirectly related to the order.

(b) **Designated cooperatives and federations.** A cooperative or federation may submit an application to the market administrator for payments under the provisions of this section or for modification of the basis of a previous designation. In accordance with the requirements of the rules and regulations issued by the market administrator, such application shall include a written description of the applicant's program for the performance of marketwide services, including evidence that adequate facilities and personnel will be maintained by it so as to enable it to perform the marketwide services; and the application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payments: **Provided**, That in the case of an application for modification of the basis for a previous designation the market administrator may waive the requirement for submission of the written description of the programs. The application shall set forth all necessary data so as to enable the market administrator to determine whether it meets the designation requirements with respect to the payments for which the application is submitted. An application shall be approved by the market administrator only if the market administrator determines that:

(1) In the case of a cooperative:

(i) It has as member producers not less than 15 percent of all producers, as defined in § 1002.6;

(ii) It has contracts with each of its affiliated cooperatives under which the cooperatives agree to continue as affiliated cooperatives for at least one year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which member producers of the affiliated cooperative are to be included within its membership for cooperative payment purposes;

(iii) It receives from each of its affiliated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperatives; and

(iv) If the application is also for an additional payment under paragraph (f)(3) of this section, the cooperative or its affiliated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of all milk delivered by its member producers; and in addition, the cooperative or its affiliated cooperatives control processing facilities capable of handling at least 10 percent, by weight, of all milk marketed by its member producers: **Provided**, That such processing facilities must be capable of handling not less than one million pounds of milk daily: **Provided further**, That the cooperative must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for acceptance of milk from its own members.

(2) In the case of a federation:

(i) It has contracts with each of its federated cooperatives under which the cooperatives agree to remain in the federation for at least one year, and such contracts cover or will be renewed for a yearly period for every subsequent year for which the federated cooperatives are to be included within the membership of the federation for cooperative payment purposes;

(ii) It has as member producers not less than 15 percent of all producers, as defined in § 1002.6;

(iii) It receives from each of its federated cooperatives not less than 1 cent per hundredweight of milk delivered by member producers of such cooperative;

(iv) If the application is also for an additional payment under paragraph (f)(4) of this section, the federation or its federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of the milk marketed by its member producers; and in addition, the federation or its federated cooperatives control processing facilities capable of handling at least 10 percent, by weight, of all milk marketed by its member producers: **Provided**, That such processing facilities must be capable of handling not less than one million pounds of milk daily: **Provided further**, That the federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk from its own members.

(3) The applicant cooperative or federation demonstrates that it has the ability to perform the marketwide services for which application is made, and that such services will be performed.

(4) The applicant cooperative or the federated cooperatives of an applicant federation are in no way precluded from arranging for the utilization of milk under their respective control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(c) *Notice of designation or denial; effective date.* Upon determination by the market administrator that a cooperative or a federation shall be designated to receive payment for performance of the marketwide services, the market administrator shall transmit such determination to the applicant cooperative or federation and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If, after consideration of an application for payments for marketwide services, the market administrator determines that the cooperative or federation is not qualified to receive such payments the market administrator shall promptly notify the applicant and specifically set forth in such notice the market administrator's reasons for denial of the application.

(d) *Requirements for continued designation.* From time to time and in accordance with the rules and regulations which may be issued by the market administrator, each designated cooperative or federation must demonstrate to the market administrator that it continues to meet the designation requirements for the payments and is fully performing the marketwide services for which it is being paid.

(e) *Marketwide services.* Each cooperative or federation shall perform the marketwide services enumerated in this paragraph. Such services shall include:

- (1) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data;
- (2) Determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in the light of changing conditions;
- (3) Participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings and the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in the referenda relative to amendments;
- (4) Participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter;
- (5) Conducting a comprehensive education program among producers, i.e., members and nonmembers of cooperatives, and keeping such producers well informed for participation in the activities under the regulatory order and, as a part of such program, issuing publications that contain relevant data and information about the order and its operation, and the distribution of such publications to members and, on the same subscription basis, to nonmembers who request it, and holding meetings which members and nonmembers may attend;
- (6) In the case of a cooperative or federation which receives an additional payment under paragraph (f)(3) or (4) of this section, operating marketing facilities, or having affiliated cooperatives or federated cooperatives that operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of the milk marketed by its member producers; and in addition, controls, or having affiliated cooperatives or

federated cooperatives that control processing facilities capable of handling at least 10 percent, by weight, of the milk marketed by its member producers: **Provided**, That such processing facilities must be capable of handling at least one million pounds of milk daily: **Provided further**, That the cooperative or federation must be willing to accept nonmember milk on a temporary basis under the generally prevailing conditions for such acceptance of milk of its own members; and

(7) Performing such other services as are needed to maintain satisfactory marketing conditions and promote market stability.

(f) Rate, computation, time, and method of payment.

(1) Subject to the provisions of paragraph (g) of this section, the market administrator, on or before the 20th day of each month, shall make payment out of the producer settlement fund, or issue equivalent credit therefor, to each cooperative or federation which is designated for such payments for marketwide services. The payments to a cooperative or federation shall be based upon the milk reported by cooperative or proprietary handlers to have been received during the preceding month from its member producers, subject to adjustment upon verification by the market administrator.

(2) Such payment or credit shall be at the rate of 3 cents per hundredweight of milk in accordance with paragraph (f)(1) of this section.

(3) Any cooperative that operates marketing facilities or whose affiliated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of the milk marketed by its member producers, and in addition, controls, or has affiliated cooperatives that control, processing facilities capable of handling at least 10 percent, by weight, of the milk marketed by its member producers but not less than one million pounds of milk daily shall receive a payment, in addition to that provided for in paragraph (f)(2) of this section, of 1 cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(4) Any federation that operates marketing facilities, or whose federated cooperatives operate marketing facilities, i.e., pool plant(s) and pool bulk tank unit(s), at which is received at least 25 percent, by weight, of the milk marketed by its member producers, and in addition, controls, or whose federated cooperatives control, processing facilities capable of handling at least 10 percent of the milk marketed by its member producers but not less than one million pounds daily, shall receive a payment, in addition to the payment provided for in paragraph (f)(2) of this section, of 1 cent per hundredweight of all milk marketed by member producers in accordance with paragraph (f)(1) of this section.

(5) If an individually designated cooperative is affiliated with a federation, the cooperative payment shall be made to such cooperative unless its contract with the federation specified in writing that the federation is to receive the payments. Any such contract must authorize the federation to receive the payments for at least one year, and such agreement must cover or be renewed for a yearly period for every subsequent year for which the federation is to receive the payments.

(g) *Cancellation of designation.*

(1) The market administrator shall issue an order wholly or partly canceling the designation of a previously designated cooperative or federation for payments authorized pursuant to this section and such payments shall not thereafter be made to it if the market administrator determines that:

(i) The cooperative or federation no longer complies with the requirements of this part: **Provided**, That if one of its affiliated or federated cooperatives has failed to comply with the requirements of this part applicable to it or has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification, the cooperative or federation shall be disqualified only to the extent that its qualification for payments or the amount of its payments is based upon the membership, milk, or operations of such noncomplying affiliated or federated cooperatives;

(ii) The cooperative or federation has failed to make reports or furnish records pursuant to this section or pursuant to rules and regulations issued by the market administrator; or

(iii) In the case of the cooperative, it has failed, promptly after demand by the market administrator, to arrange for the utilization of milk under its control so as to yield the highest available net return to all producers without displacing an equivalent quantity of other producer milk in the preferred classification.

(2) An order of the market administrator wholly or partly canceling the designation of a cooperative or federation shall not be issued until after the cooperative or federation has had opportunity for hearing thereon following not less than 15 days' notice to it specifying the reasons for the proposed cancellation. If the cooperative or federation fails to file a written request for hearing with the market administrator within such period of 15 days, the market administrator may issue an order of cancellation without further notice; but if within such period a request for hearing is filed, the market administrator shall promptly proceed to hold such hearing pursuant to rules and regulations issued by the market administrator under paragraph (i) of this section.

(3) A cancellation order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(h) *Appeals.*

(1) **From denials of application.** Any cooperative or federation whose application for designation has been denied by the market administrator may, within 30 days after notice of such denial, file with the Secretary a written petition for review. But the failure to file such petition shall not bar the cooperative or federation from again applying to the market administrator for designation.

(2) **From cancellation orders.** A cancellation order by the market administrator shall become final 30 days after its service on the cooperative or federation unless within such 30-day period the cooperative or federation files a written petition with the Secretary for review

thereof. If such petition for review is filed, payments for which the cooperative or federation has been canceled by the order shall be held in reserve by the market administrator pending ruling of the Secretary, after which the sums so held in reserve shall either be returned to the producer settlement fund or paid over to the cooperative or federation depending on the Secretary's ruling on the petition. If such petition for review is not filed, any payments which otherwise would be made within the 30-day period following issuance of the cancellation order shall be held in reserve until such order becomes final and shall then be returned to the producer settlement fund.

(3) **Record on appeal.** If an appeal is taken under paragraph (h)(1) or (2) of this section, the market administrator shall promptly certify to the Secretary the ruling or order appealed from and the evidence upon which it was issued: **Provided**, That if a hearing was held the complete record thereof, including the applications, petitions, and all exhibits or other documentary material submitted in evidence shall be the record so certified. Such certified material shall constitute the sole record upon which the appeal shall be decided by the Secretary.

(i) **Regulations.** The market administrator is authorized to issue regulations and amendments thereto to effectuate the provisions of this section and to facilitate and implement the administration of its provisions. Such regulations shall be issued in accordance with the following procedure:

(1) All proposed rules and regulations and amendments thereto shall be the subject of a meeting called by the market administrator, at which all interested persons shall have opportunity to be heard. Not less than five days prior to the meeting, notice thereof and of the proposed regulations or amendments shall be mailed to qualified cooperatives and federations. A stenographic record shall be made at such meetings which shall be public information and be available for inspection at the office of the market administrator.

(2) A period of at least five days after the meeting shall be allowed for the filing of briefs.

(3) All regulations and amendments thereto issued by the market administrator pursuant to this section must be submitted in tentative form to the Secretary for approval, shall not be effective without such approval. The regulations or amendments in tentative form shall be forwarded also to cooperatives and federations designated under this section and to other persons upon request in writing. The Secretary shall either approve the regulations or amendments thereto submitted by the market administrator or direct the market administrator to reconsider the tentative rules or amendments. In the event the market administrator is directed to give reconsideration to the matter, the market administrator shall either issue revised tentative regulations or amendments or call another meeting pursuant to this section for additional consideration of the rules or amendments.

(j) **Reports and records.** Each designated cooperative or federation shall, in accordance with rules and regulations issued by the market administrator:

(1) After submission to the market administrator for verification, make a public report of its performance of marketwide services pursuant to this section, including data on its receipts and expenditure of cooperative payments funds and a description of the marketwide services performed. The report shall contain a certification by the market administrator that the report is, to the best of the market administrator's knowledge, accurate and in accordance with the rules and regulations which the market administrator has established.

§ 1002.77 (j)(2) - § 1002.80 (b)(3)

(2) Submit an annual report to the market administrator which shall include:

(i) A concise report of its performance of marketwide services and allocations of expenditures to such performance for the previous year; and

(ii) An outline of its proposed program and budget for performance of marketwide services for the coming year.

(3) Make such additional reports to the market administrator as may be requested by the market administrator for the administration of the provisions of this section.

(4) Maintain and make available to the market administrator or the market administrator's representative such records as will enable the market administrator to verify such reports.

(k) *Notices, demands, orders, etc.* All notices, demands, orders, or other papers required by this section to be given to or served upon a cooperative or federation shall be deemed to have been given or served as of the time when mailed to the last known secretary of the cooperative or federation at the secretary's last known address.

PAYMENT BY HANDLERS DIRECTLY TO PRODUCERS

§ 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the lowest class price for the preceding month.

(b) On or before the 20th day of the month, each handler shall make payment, pursuant to paragraphs (c), (d), (e), (f) and (g) of this section, to each producer for the balance due for all milk received from such producer during the preceding month at not less than the uniform price for such month, subject to the following adjustments:

(1) Appropriate differentials set forth in §§ 1002.81 and 1002.82;

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk (except as specified in paragraph (b)(3) of this section);

(3) For milk received in a bulk tank unit and for which transportation was provided by the handler or at the handler's expense, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge. This charge may include any farm-to-first plant transportation costs for which the handler was not reimbursed through the transportation credit pursuant to § 1002.55, but such charge shall be reduced by the amount that the class use location value of milk at the plant of first receipt exceeds its class use location value where the milk was accounted for as a receipt in the bulk tank unit from which the milk was transferred. Any such deduction, plus the transportation credit, and plus the amount of the increase in class use location value of the milk at the plant compared to the unit shall not exceed the actual transportation costs incurred. Any such deduction also must be made by the handler not later than the date on which the producer is required to be paid for such milk. If authorization for such deduction is canceled by the producer or by the cooperative by notifying

§ 1002.80 (b)(3) - § 1002.80 (g)

the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler; and

(4) For pool milk delivered directly from a farm to a pool plant or a partial pool plant that was not put into a tank truck prior to such delivery, the handler shall pay to the producer an additional amount computed by multiplying the quantity of such milk by a rate per hundredweight that is equal to the rate specified in § 1002.55.

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before 2 days before payments are due to individual producers if paid by check, or the same day such payments are due to individual producers if paid in cash or cash equivalent, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

(d) Each handler which is also a cooperative marketing association, determined by the Secretary to be qualified under the Capper-Volstead Act with respect to producers who are members of and under contract with such association, may make distribution in accordance with the contract between the association and such members of the net proceeds of all its sales in all markets in all use classifications.

(e) Whenever verification by the market administrator of the payment to any producer or cooperative association of producers for milk delivered to any handler discloses payment of less than is required by this part, the handler shall make up such payment to the producer or cooperative association of producers not later than the time of making payment next following such disclosure.

(f) If a handler claims that the required payment cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, such payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make such payment from the producer settlement fund to the handler or to the lawful claimant, as the case may be.

(g) If not later than the date when such payment is required to be made, legal proceedings have been instituted by the handler for the purpose of administrative or judicial review of the market administrator's findings upon verification as provided above such payment shall be made to the producer settlement fund and shall be held in reserve until such time as the above-mentioned proceedings have been completed or until the handler submits proof to the market administrator that the required payment has been made to the producer or association of producers in which latter event the payment shall be refunded to the handler.

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of one percent of butterfat above or below 3.5 percent by an amount computed as follows: Round to the nearest one-tenth cent, 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1002.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

§ 1002.82 Transportation differentials.

The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in § 1002.52 (c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

EXPENSE OF ADMINISTRATION

§ 1002.85 Payment by handlers.

To share on a pro rata basis the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer settlement fund pursuant to § 1002.72, pay to the market administrator a sum not exceeding 5 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.60 (d)(2), (d)(3) and (d)(4) the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.